

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 58 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHIMANI ESTATE PRIVATE LTD

Versus

STATE OF GUJARAT

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Appearance:

MR DD VYAS for Petitioner  
Mr.M.R.Anand, GP with Kamal Mehta  
AGP for Respondent No. 1 to 3  
MR SN SHELAT for Respondent No. 4

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE S.D.PANDIT

Date of decision: 19/08/96

ORAL JUDGEMENT(Per:Pandya.J)

The petitioner owns land in the urban agglomeration area of the city of Rajkot and is admittedly covered by the Urban Land(Ceiling & Regulation Act) 1976 (hereinafter referred to as ULC Act) at the time when the notification under section 4 of the Land Acquisition Act(hereinafter referred to as the said Act) came to be issued on 28.1.81. After filing form under section 5 of the ULC Act, the petitioner had also obtained exemption u/s 21 of the ULC Act on 10.9.80. After issuing the Notification u/s 4 of the said Act, Notification under section 6 of the said Act was also issued on 16.3.89.

2. Several grounds were taken in the petition out of which only two grounds are pressed into service at the time of final hearing.

3. The first one is that the Collector having issued Notification u/s 4 of the said Act, Notification as per Annexure-B page 25 was issued for hearing objections and completing the formalities under section 5A of the said Act, the Collector should not have delegated his authority to the Dy.Collector, Rajkot by appointing him as Special Land Acquisition Officer by that very Notification.

4. The submission was further elaborated by Mr. D.D. Vyas L.A. for the petitioner by saying that the Collector himself having issued Notification u/s. 4 of the said Act hearing also could have been given by him.

5. However, section 52A added in Gujarat and sub-section 1 of which takes care of the situation and so does the Notification itself at Annexure-B page 25.

6. Provision of sub section 1 of section 52A was introduced in Gujarat by way of the very Validation Act 35 of 1949 as amended by Land Acquisition (Amendment) Act 20 of 1965 with effect from 15.8.65. Needless to say, said 1949 Validation Act was a Bombay Act.

7. Said section 52A specifically provides for delegation by the Collector as well as by the State Government for different purposes of the said Act. So far as the hearing is to be given is concerned, the Collector is empowered by section 1 of section 52A to delegate his power was a function under the Act to any officer and not below the rank of Mamlatdar. After the reference to an officer not below the rank of Mamlatdar sub section 1 also contains a provision..." or to a Land

Acquisition Officer specially appointed by the State Government in this behalf." Mr. Vyas submitted that the words appearing after reference to " any officer not below the rank of Mamlatdar" quoted above would govern an officer of the rank of Mamlatdar and above also. In otherwords, according to Mr. Vyas if the Collector delegates his power to any officer under sub-section 1, he will be an officer specially appointed by the Government for the purpose. In our opinion, this is not the way the section can be read.

8. Reference to officer not below the rank of Mamlatdar or to a Land Acquisition Officer specially appointed by the State Government will be understood, if few illustrations are taken into consideration e.g. if a statutory body like Industrial Development Bank of India or Oil and Natural Gas Corporation are to undertake the exercise, the State Government may specially appoint an officer of any of these statutory bodies to exercise the powers and therefore, the case would be covered by the reference to an officer who is to be found in the earlier part of subsection 1 when limit is fixed in the rank viz. not below the rank of Mamlatdar. Even otherwise subsection 1 also takes care of the fact situation where the officer to be authorised may not be holding the rank of Mamlatdar and above and yet may have to be authorised for the purpose. It is for the purpose of meeting with these special situation , in our opinion that a provision has been made, after reference, to an officer who is a Mamlatdar and of the rank above. In our opinion therefore, words" specially appointed by the Government in this behalf" will not govern the fact situation where officer who delegated is of the rank of Mamlatdar or above. This contention of Mr. Vyas in our opinion therefore, fails.

9. Next submission made with utmost seriousness was with regard to the exemption under section 21 of the ULC Act said to have been granted to the petitioner on 10.9.90. The submission further elaborated upon by placing reliance upon a case reported in AIR 1989 page 1796 in the case of Dattatraya Shankerbhat Ambalgi vs. State of Maharashtra was to the effect that section 42 of the ULC Act has overriding effect to the said Act and therefore, as long as the coverage of ULC Act is necessary,superintendence of the said Act cannot be invoked. Mr. Vyas further submitted that when cover of ULC Act is permitted for using the land for weaker section of the section by granting exemption under section 21 of the ULC Act, State Government cannot initiate acquisition proceedings and land has to be left

to be used for that purpose alone.

10. In our opinion section 21 of the ULC Act has to take effect of exempting the land from the ceiling but for which, the land would be dealt under the amended provisions of the ULC Act and virtually it will vest in the State Government and the owner of the land will be given compensation as prescribed under the Act.

11. The effect of the exemption therefore is that it is an attempt to take of the recourse of the amending provisions of the Act instead of excess land being vested in the State Government which continues to be the owner or holder as the case may be. Having thus taken advantage of the relevant provisions of the ULC Act and thus being able to retain the land for himself as an owner now he cannot take a somersault. Therefore, in our opinion, the land can be acquired again under the said Act to which Mr. Vyas has readily agreed. In our opinion, whether the land is proposed to be utilised for weaker section or not, the land could have been acquired under the said Act and the effect of getting exemption u/s 21 of the ULC Act cannot be anything else but one that the State can acquire it under the provisions of the said Act.

12. Said Supreme Court decision sought to be relied upon by the petitioner was dealing with the fact situation where the provisions of Maharashtra Regional and Town Planning Act, the Urban Land Ceiling Act and Land Acquisition Act 1894 were sought to be considered by the petitioner before the Supreme Court.

13. The Maharashtra Regional & Town Planning Act envisages development of the area and in the process, a particular area is to be either reserved or kept apart for a particular purpose, may be even for a public purpose. No doubt for the purpose of acquisition of the land under the provisions of Maharashtra Regional & Town Planning Act incorporation of Land Acquisition Act 1894 may be necessary and that was the decision to be found in the aforesaid Supreme Court decision.

14. However, merely because the provisions of Maharashtra Act was invoked in Sholapur city area and because there is a reference to Land Acquisition Act in the said Maharashtra Act the Supreme Court held that by virtue of section 42 of ULC Act, ULC Act 1976 will have over ridding effect and therefore, there is no question of compelling the authorities to exercise its powers

under the Maharashtra Act.

15. In the instant case no doubt the ULC Act does apply. Therefore, there is no question of getting exemption u/s 21 of the Act for the petitioner on one hand and for the State Government to grant exemption on the other. Thus having retained the land he cannot escape the acquisition proceedings under the Land Acquisition Act .

16. It may be mentioned here that the petition has been opposed by the respondents and affidavit in reply has been filed by the State Government through their Land Acquisition officers and by ST corporation through their estate manager also. All the contentions and allegations made in the petition have been dealt with in the said affidavit in reply but the petition has been argued and contested with regard to these two points only. In the circumstances, the petition is required to be dismissed and the same is dismissed. Interim relief granted earlier stands vacated. Rule discharged. No order as to costs.

17. It seems that before approaching this court by way of this petition the petitioner had already filed civil suit no.411/81 in the court of the learned Civil Judge(SD) Rajkot. In the further affidavit in reply filed on behalf of respondent no.3 at page 81 it has been stated that said suit has been dismissed 26.7.88. There is no information whether any appeal is pending or not. However it is quite obvious that in view of the decision of the Supreme Court in the case of Laxmichand vs. Gram Panchayat , Karia reported in 1996 SC 523 the petition no question lie in a civil court against the acquisition proceedings. Obviously therefore, even if appeal is filed it will be meaningless. However, we are not passing any order in this regard in view of the aforesaid statement made in the further affidavit.

(N.J.Pandya.J)

(S.D.Pandit.J)

